

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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ACE AMERICAN INSURANCE COMPANY,  
FEDERAL INSURANCE COMPANY,  
INSURANCE COMPANY OF NORTH  
AMERICA, MARYLAND CASUALTY  
COMPANY and NORTHERN INSURANCE  
COMPANY,

**Plaintiffs,**

v.

CROSBY YACHT YARD, INC. AND,  
OYSTER HARBORS MARINE, INC.,

**Defendants.**

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**Civil Action No.  
04-12252-WGY**

**DEFENDANT CROSBY YACHT YARD, INC.'S OPPOSITION TO PLAINTIFFS'  
MOTION FOR CONSOLIDATION OF ACTIONS**

NOW COMES the defendant, Crosby Yacht Yard, Inc. (hereinafter, "Crosby"), by and through its undersigned attorneys, and submits its opposition to the Plaintiffs' Motion for Consolidation of Actions. The Motion should be denied for the following reasons:

1. This Motion should have been filed in the previously filed action of Standard Fire Insurance Company v. Crosby Yacht Yard, Inc. and Oyster Harbors Marine, Inc., Civil Action 04-12244-GAO. Local Rule 40.1(J) provides that a Motion for Consolidation of two (2) or more cases shall be made in the case first filed in this Court. (emphasis added).

2. This case is directly related to the previously filed action of Standard Fire Insurance Company v. Crosby Yacht Yard, Inc. and Oyster Harbors Marine, Inc., Civil Action 04-12244-GAO and, as such, should have been assigned to Judge O'Toole. Local Rule 40.1 (G)(1) provides that a case is related if it involves the same parties and, *inter alia*, the same property, transaction or event. As set forth in the Plaintiffs' Motion for Consolidation of

Actions, this matter arises out of a fire at the Crosby premises on or about December 10, 2003, involving the loss of many vessels. While plaintiffs' counsel and/or the clerk may not have known that the cases were related as they were filed close in time, plaintiffs' counsel has been advised that this case should be transferred to Judge O'Toole, as it was filed later than the Standard Fire case. In fact, Local Rule 40.1 (G)(3) provides the related cases shall be assigned to the same judge. (emphasis added).

3. Crosby acknowledges that the cases are related, as they involve the same fire. However, Crosby objects to the cases being consolidated.

The two cases seek resolution by a different fact finder. In the instant case, the plaintiffs seek a trial by jury while in the Standard Fire case, there is no jury trial claimed. (The plaintiff in Standard Fire asserts both admiralty and diversity jurisdiction. It is clear that this calls for a resolution by the Court only. Concordia Company, Inc. v. Panek, 115 F.3d 67 (1<sup>st</sup> Cir. 1997)). The Court should deny consolidation when cases seek resolution by different fact finders. Servants of the Paraclete, Inc. v. Great American Insurance Co., 866 F.2d 1560, 1573 (D.N.M. 1994).

Also, the two cases involve different plaintiffs, who insured different vessels, which had different degrees of damage and were valued in different amounts. Consolidation would be inappropriate under these circumstances. Forsythe v. Sun Life Financial Inc., et al, 2005 WL 81576 (D. Mass. 2005), Servants of the Paraclete, Inc., 866 F.2d at 1572, 1573.

WHEREFORE, defendant Crosby prays that the Plaintiffs' Motion for Consolidation of Actions be denied.

By its attorney,

/s/ Seth S. Holbrook  
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**Certificate of Service**

I hereby certify that on February 22, 2005, I electronically filed Defendant Crosby Yacht Yard, Inc.'s Opposition to Plaintiffs' Motion for Consolidation of Actions with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: John H. Bruno, II, Masi & Bruno, 124 Long Pond Road, Unit 11, Boston, MA 02110, and David J. Daly, Daly Cavanaugh LLP, 27 Mica Lane, Wellesley, MA 02481.

Copies were also mailed to the above counsel by pre-paid, first-class mail.

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